

September 5, 2014

David Chang
General Manager
Mosquito and Vector Management
District of Santa Barbara County
PO Box 1389
Summerland CA 93067

Re: Your Request for Advice
Our File No. A-14-165

Dear Mr. Chang:

This letter responds to your request for advice regarding conflict of interest code provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code section 1090.

QUESTION

Is the Santa Barbara County Mosquito and Vector Management District a multicounty agency whose code reviewing body is the Fair Political Practices Commission for purposes of the Act?

CONCLUSION

No. The Santa Barbara County Mosquito and Vector Management District is a single-county agency whose code reviewing body is the Santa Barbara County Board of Supervisors for purposes of the Act as discussed below.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

The Santa Barbara County Mosquito and Vector Management District (the “District”) is conducting its biennial review of its conflict of interest code. However, a procedural question exists as to whether the District is a multi-county or single county agency.

The agency was formed as an independent special district in California and is governed by eight member board of trustees, three trustees are appointed by the City Councils located within the benefit assessment areas (Goleta, Santa Barbara, and Carpinteria, all located within Santa Barbara County) and five trustees are appointed by the Santa Barbara County Board of Supervisors. The agency is funded by county-wide ad valorem taxes and benefit assessments from an enhanced services district in southern Santa Barbara County.

However, the District also performs work for the City of Pismo and the Oceano Dunes State Park (in neighboring San Luis Obispo County) under a fee for service contract since San Luis Obispo County does not have a local mosquito control district. Under the contract, San Luis Obispo County does not appoint any trustees to the District’s board and the District does not receive any tax revenue from San Luis Obispo County.

City of Pismo Beach Agreement: Generally, the District agrees to provide mosquito control services on City properties. This entails assigning staff to apply appropriate chemical, biological, or microbiological agents to suppress larval infestations of mosquitoes and to take reasonable steps to prevent and control mosquito breeding at all City properties as delineated in the Mosquito Management Plan. The agency also provides:

- Quarterly reports to the City of Pismo Beach Public Works Department. The report includes: detailed monitoring activities, dip test/results that triggered the treatments, treatment agent used and its amount per area, and locations, dates and times of treatments.
- An updated Mosquito Management Plan for each successive fiscal year including, but not limited to updated costs for materials and labor, additional breeding sites or habitat areas, overall assessment and effectiveness of treatment, long-term mosquito management strategies, as well as in-depth summaries of all quarterly reports documented over the fiscal year.

Oceano Dunes State Park Agreement (a state entity): Similarly, under the Oceano contract, the District agrees to the following:

- Conduct mosquito control at the Oceano Lagoon located within Pismo State Beach. Treat all ponded water from the Maintenance yard to Pier Avenue. This area is roughly 10 acres with 7 acres that are conducive to mosquito breeding.

- Treat the North Beach Campground located within Pismo State Beach, including all ponded water throughout the campground, including sections of Meadow Creek and Carpenter Creek.
- Treat the Pismo Lake Ecological Reserve including all ponded water.
- Treat the Pismo Estuary within Pismo State Beach, including stagnant pools, eddies, pools cut off from creek flow, side pockets, and other low flow areas.

ANALYSIS

The Act, specifically Section 87300, requires every state and local government agency to adopt a conflict-of-interest code. The code must enumerate the positions within the District that involve the making or participation in the making of decisions that may foreseeably have a material financial effect on any financial interest held by the person filling the position. Further, the code specifies which financial interests must be disclosed by persons holding those positions designated in the code -- all with a view to avoiding conflicts of interest. (Sections 87300-87302.) The issue addressed in your request for advice is whether the Commission should be the code reviewing body for the District or if the Santa Barbara County Board of Supervisors should be the code reviewing body.

Pursuant to Section 82011, “code reviewing body,” as it relates to a county agency versus a multi-county agency, means the following:

“(a) The [C]ommission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

“(b) The board of supervisors, with respect to the conflict-of-interest code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.”

The jurisdiction of a local government agency is “. . . the region, county, city, district or other geographical area in which it has jurisdiction . . .” (Section 82035.) Thus, to answer the question of whether the District is a multi-county agency subject to the Commission’s review or a county agency subject to the Santa Barbara County Board of Supervisors’ review, we must consider the “jurisdiction” as it applies to the District agency.

In past advice letters the Commission examined whether an agency owns real property in the other county or exercised significant authority in another county.

Determined to be Multi-County

- *Gong* Advice Letter, No. A-14-092. “Effective July 1, 2011, the Napa WIB [Workforce Investment Board] was renamed as the Napa-Lake WIB and reconfigured to include the geographical area of Lake County. The Joint Powers Agreement provided:
 - The Governor of the State of California has designated the Counties of Napa and Lake as a single LWIA [Local Workforce Investment Areas] comprised of the geographical areas of Napa County and Lake County as “Napa-Lake LWIA.”
 - The membership of the Napa-Lake WIB will be split between representatives of the two counties. The JPA agreement provides the new Napa-Lake WIB will do the following:
 - “All funds allocated to Napa County on behalf of the Napa-Lake LWIA will be allocated for LWIA programs and services provided within each County’s respective geographical area in the same proportion as determined by Federal and State formula under WIA to Napa and Lake Counties and based on the same data sources used for the WIA allocation formula to the Counties. The allocated funds shall be used for the purpose of developing and implementing a workforce development system meeting the requirements of the Workforce Investment Act and the local needs of Napa and Lake Counties. Lake County agrees that Napa County shall receive ten percent (10%) of the funds allocated under the WIA formula to Lake County as reimbursement to Napa County for the costs of administering the workforce investment programs and activities of the Napa-Lake LWIA. The One-Stop Operator(s) and any other subrecipient for LWIA programs provided within the geographical area of Lake County will be considered subrecipients as defined under this agreement.”
- *Zimring* Advice Letter, No. A-90-167. In the *Zimring* advice letter, a school district principally located in one county annexed a small portion of another county and was declared a multi-county agency in part because the residents of the annexed portion of the other county were entitled to receive services provided by the school district.

Determined to be Single-County

- *Krause* Advice Letter, No. A-05-036. “Although the political boundaries of MID are entirely within the County of Merced, MID owns and operates the Merced River Hydroelectric Project facilities including Lakes McClure and McSwain, New Exchequer and McSwain Dams, and recreational facilities located entirely within Mariposa County. MID sells electric power from these facilities to Pacific Gas & Electric and distributes irrigation water from these facilities into Merced County serving MID farmers. MID does deliver a small quantity of wholesale water to the Lake Don Pedro Community Services District. This water is treated by the Lake Don Pedro Community Services District for domestic use by its customers in Mariposa County. Only registered voters

residing within MID's political boundaries, the County of Merced, are eligible to vote in district elections. Additionally, the MID was defined as a single county agency for the purposes of the state's appropriation of residual property tax revenue from special districts in 1993.

- *Woliver* Advice Letter, No. A-84-123. "In determining whether an agency principally located within one county has jurisdiction in another county, we look at whether the agency owns real property and to what extent it has authority in the other county. [Here] it appears the Mendocino County Office of Education does not own real property in Sonoma County nor does it have any real authority in Sonoma County; the only exchange the Mendocino County Office of Education has with the school district partially located in Sonoma County is to provide information on consolidated trustee elections."

Comparing your facts to the facts considered in the letters above, it does not appear that you would be classed as a multi-county agency. Your contracts with the City of Pismo Beach and the Oceano Dunes State Park outside your county are essentially service contracts. Unlike *Gong*, you have not merged with the other parties to create a different multi-county agency, moreover the other parties are not included in the control of the operations in the District. In contrast to *Zimring*, the District has added no land from San Luis Obispo County to its jurisdiction but rather simply provides services to the entities that do control the areas of in San Luis Obispo County. The population of the other parties have accrued no entitlement to services from the District, rather they benefit by the contracts, but continue to be entitled to service by the city and state.

Finally, like the entity in *Woliver*, we conclude that since the District does not own real property in San Luis Obispo County nor does it have any real authority there, we do not consider the District an agency of both Santa Barbara County and San Luis Obispo County. Rather the District is a single-county agency whose code reviewing body is the Santa Barbara County Board of Supervisors.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl